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February 22, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: CC Docket 94-102

Dear Ms. Salas:

On February 16, 1999, the undersigned utilized the Commission's Electronic Comment Filing System to submit "Comments of Public Safety Associations in Response to Requests for Waiver of Phase II Requirements" in the above-captioned proceeding. Unfortunately, the undersigned discovered today that this document was inadvertently submitted to the wrong docket: WT Docket 96-86. Copies of the document are enclosed and should be included in the record for CC Docket 94-102. Copies will also be sent via first class mail to all parties that had submitted waiver requests.

Respectfully submitted,

WILKES, ARTIS, HEDRICK & LANE,
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By:


Robert M. Gurs

Attorneys for Association of Public-Safety
Communications Officials-International, Inc.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's)	CC Docket No. 94-102
Rules to Ensure Compatibility)	
with Enhanced 911 Emergency)	
Calling Systems)	

To: The Commission

**COMMENTS OF PUBLIC SAFETY ASSOCIATIONS
IN RESPONSE TO
REQUESTS FOR WAIVER OF PHASE II REQUIREMENTS**

The Association of Public-Safety Communications Officials-International, Inc. ("APCO"), the National Emergency Number Association ("NENA"), and the National Association of State Nine One One Administrators ("NASNA"), (hereinafter "Public Safety Associations") hereby submit the following comments in response to requests filed by wireless carriers seeking waivers of the Phase II Automatic Location Identification ("ALI") requirements, pursuant to the Commission's *Public Notice*, DA 98-2631, (December 24, 1998) (hereinafter "*Public Notice*")

Phase II of the Commission's wireless E9-1-1 rules provide that by October 1, 2001, wireless carriers must provide Public Safety Answering Points ("PSAPs) with the location of all 9-1-1 calls to a specified level of accuracy, subject to certain conditions. One methodology for satisfying this obligation is the use of network-based ALI technology which does not require modification to customer handsets. An alternative approach now being considered by some carriers is a handset-based solution that relies

upon GPS technology. The *Public Notice* suggests that carriers implementing a handset-based solution may not be able to meet the October 1, 2001, Phase II implementation deadline for all customers. Therefore, the *Public Notice* establishes guidelines and procedures for carriers to seek waivers of the Phase II deadline.

On February 2, 1999, prior to the initial cut-off date for waiver requests, the Public Safety Associations filed "Comments" in response to the *Public Notice*. The Comments expressed serious misgivings regarding the need and advisability of waivers, noting that waivers could cause indefinite delays in implementation of Phase II, and could "diminish the ubiquity and affordability of Phase II radiolocation." The Comments also suggested that the Commission's waiver process constituted a *de facto* rule change without proper compliance with the Administrative Procedures Act. Finally, while acknowledging the potential long-term benefits of handset solutions in some circumstances, the Comments suggested that handset solutions be viewed as a possible "Phase III" to increase ultimate location accuracy, with network-based Phase II solutions providing short-term and mid-term compliance, and then serving as a "back-up" for Phase III handset solutions.

On February 4, 1999, the Commission received 27 waiver requests in response to the *Public Notice*. As the Public Safety Associations had feared, most of the requests fall far short of what is necessary to justify setting aside Commission regulations, especially where public safety is at risk. Little or no specific data is offered, and some applicants openly admit that supportive information about handsets, at this stage, is speculative or unavailable. They add that they will supplement their requests as soon as they can, but clearly, they are admitting that waiver is premature. Other applicants persist in asking for

waiver, even without documentation. These requesters appear to be doing nothing more than hoping to delay the Phase II deadline.

In effect, the waiver requests are thinly veiled efforts to modify the Commission's rules and postpone implementation of Phase II. This is in stark contrast to Chairman Kennard's recent statement to the wireless industry that "I don't think we should wait until the next millennium to bring a service to Americans that they need today. My challenge to you is not just to meet, but to beat, ...[the October 1, 2001]...deadline."¹ Unfortunately, if the waiver requests are any indication, many in the wireless industry are planning to do just the opposite and defeat the entire Phase II process by stretching it out far as possible into the next millennium.

The Commission's *Public Notice* set forth four basic criteria for consideration in evaluating waiver requests. The Commission asked for information regarding (1) the level of ALI accuracy with handset solutions, (2) documented timetables and milestones regarding deployment of ALI-capable handsets, (3) steps that would be taken to minimize problems with non-ALI capable handsets, including cost analysis for upgrading or replacing "legacy" handsets; and (4) steps that would be taken to address roamer situations, together with data on roamer calls to 9-1-1.

None of the waiver requests provided detailed information on all four of the criteria set forth in the *Public Notice*, and most never even tried. While some carriers provided ALI accuracy information for handset technology, the common source for that information was a single vendor and its own limited field tests. Few carriers even

¹ Speech of Chairman William E. Kennard, CTIA Convention, "Crossing into the Wireless Century" (February 9, 1999).

attempted to provide timetables or milestones for ALI handset implementation, other than mere speculation and repetitive citations to vendor generated marketing studies. None of the carriers offered any constructive proposals to address legacy handsets, aside from attempting to minimize their impact, and little or no data was provided regarding the cost of upgrading or replacing existing handsets.

Finally, none of the requesters provided plans to address and minimize the longer term problems created by 9-1-1 calls from non-ALI capable handsets “roaming” in service areas of carriers using only handset solutions for Phase II compliance. Identifying the location of roamers calling 9-1-1 is especially important, since out-of-town roamers are the 9-1-1 callers who are least able to tell a 9-1-1 operator their exact location when reporting an emergency. Yet, only one carrier even bothered to respond to the Commission’s request for specific data regarding the number of 9-1-1 calls made by roamers (data which should be readily available), and its response suggested that a very substantial number of roamer 9-1-1 calls are being made every day.² Without similar information from other carriers, the Commission is in no position to waive its rules or take other action that could make roamers “second class” customers with regard to E9-1-1 capability.

Perhaps a case can be made at some point for limited waivers of the Phase II deadlines to accommodate handset solutions. At this time, however, waivers are clearly premature based on the extremely slim, unsubstantiated requests filed to date. The


² The only responder was Ameritech, whose data indicated that there are hundreds of 9-1-1 calls made every week by roamers in each of its markets. In Ameritech’s Central Illinois market, 34% of all 9-1-1 calls were from roamers.

Commission cannot grant waivers based on the current record, and any other Commission action at this time can only be accomplished through a proper rulemaking proceeding.

Respectfully submitted,

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